IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11487 of 2002

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANPATBHAI HARIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11487 of 2002

MR SK JHAVERI for Petitioner No. 1

MR PR ABICHANDANI, AGP for Respondent No. 1-2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/12/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is a retired Sales-tax Officer, Class-II. On 29th June, 2002, the Commissioner of Sales-tax ordered that the petitioner should retire from service on 30th June, 2002. It was further directed that in view of the inquiry pending with the Anti Corruption Bureau, the retiral dues of the petitioner be governed under Rule 189-B of the Bombay Civil Services Rules, 1959 (hereinafter referred to as 'the Rules'). The petitioner has lodged his objection against the said communication on 8th July, 2002. In answer thereto, under order dated 3rd September, 2002, the petitioner has been ordered to be paid the pension due and payable to him as provisional pension but the gratuity due and payable to the petitioner has been ordered to be withheld on the ground that on the date of the retirement of the petitioner, the departmental inquiry was pending against him. Feeling aggrieved, the petitioner has preferred the present petition.

Mr.Jhaveri has submitted that no disciplinary action was ever initiated against the petitioner during the period of his service. On the date of his retirement from service, neither any disciplinary action nor any criminal prosecution was pending against the petitioner nor any amount was due and payable by the petitioner. There was no earthly reason why the petitioner should not have been paid all his retiral benefits on reaching the age of superannuation.

In answer to the notice issued by this Court, the respondent has appeared and contested the petition. It is submitted that the petitioner is alleged to have amassed wealth disproportionate to his known sources of income. The matter was pending with the Anti Corruption Bureau and was forwarded to the Vigilance Commission. In view of the said inquiry entrusted to the Vigilance Commission, under Rule 189-A of the Rules the State Government has power to withhold the pension payable to the petitioner and, under Rule 189-B of the Rules, the Government has power to withhold the amount of gratuity.

Rule 189-A of the Rules empowers the State Government, inter alia, to withhold pension or any part of it whether permanently or for specified period, if in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service. It further enjoins upon the State Government to continue and complete the departmental proceedings even after the retirement of the Government servant concerned if such proceedings are commenced while he was in service, before his retirement or during his

re-employment, clause-(b) thereof enables the State Government to institute departmental proceedings even after the retirement of the Government servant in respect of any event which took place within four years before such institution. Rule 189-B of the Rules enjoins upon the State Government to withhold gratuity or death-cum-retirement gratuity payable to the Government servant on his retirement if any departmental or judicial proceeding is instituted under Rule 189-A or where a departmental proceeding is continued under clause-(a) of the proviso thereto, until the conclusion of such proceeding and the issuance of final order thereof.

Thus, both the above referred Rules are applicable in case where a departmental or judicial proceeding is instituted while the Government servant is in service and is continued after his retirement. It is well settled that a departmental proceeding can be said to have been instituted when a formal charge-sheet is issued in respect of the charge levelled against the delinquent. Similarly, a judicial proceeding can be said to have been instituted when a complaint has been lodged and the cognizance of the offence has been taken by the Court concerned. Admittedly, in the present case, neither a departmental proceeding nor a judicial proceeding has been instituted against the petitioner till the date. Neither the pension nor the gratuity payable to the petitioner can be withheld on the specious ground of preliminary investigation pending either with the Anti Corruption Bureau or the Vigilance Commission. Neither of the above referred rules nor any other rule empowers the State Government to withhold the retiral benefits or any part of such benefits payable to its retired employee for a contemplated departmental or judicial proceeding. Hence, in the present case, the respondent Authorities have no power or authority to withhold pension or gratuity due and payable to the petitioner. The action of the respondent Authorities in allowing the petitioner to draw provisional pension and withholding the amount of gratuity is ex facie illegal, null and void.

In the result, the petition is allowed with costs. The impugned order dated 3rd September, 2002, in so far as it orders withholding of gratuity and release of provisional pension, is quashed and set aside.

It is declared that the petitioner is entitled to receive full and final pension and the amount of gratuity as well. It is, therefore, directed that the concerned Authority shall issue order for full and final payment of

pension. The petitioner's request for commuted value of pension shall also be considered according to law. Necessary order in this regard shall be made within two months from today. The amount of gratuity due and payable to the petitioner shall be paid within fifteen days from today. The petitioner shall also be entitled to receive interest on the said amount of gratuity at the rate of 6% per annum from the date of his retirement till the date of payment. In the event, the respondent Authorities fail to pay the aforesaid amount of gratuity within fifteen days from today, the petitioner shall be entitled to interest thereon at the rate of 10% per annum from the date of his retirement till the date of payment of the said amount. Rule is made absolute.

(Ms. R.M. Doshit, J.)

/sakkaf